forceable under the statute of frauds, and sued on a *quantum meruit* for the value of services rendered. *Held*, that the plaintiff cannot recover. *Collins* v. *Smith*, 44 Can. L. J. 163 (Ont., Div. Ct., Feb. 3, 1908).

It is generally held that one who abandons a contract cannot recover for a part performance of it. *Hapgood* v. *Shaw*, 105 Mass. 276. But, by the weight of authority, a plaintiff in default may recover for services rendered under an oral contract unenforceable by reason of the statute of frauds. *Bentley* v. *Smith*, 59 S. E. 720 (Ga.); *contra*, *Swanzee* v. *Moore*, 22 Ill. 63. The reason usually given is that the defendant should not be allowed to set up the void contract as a defense. *King* v. *Welcome*, 5 Gray (Mass.) 41. This position, however, seems inconsistent with the plaintiff's privilege of setting up the contract to raise an implied promise for his *quantum meruit*, and with the effect given to the contract in fixing his damages. If recovery is allowed, it would seem better to put it on the ground that the defendant would be unjustly enriched by being allowed to retain the benefit of the plaintiff's services without paying for them. Accordingly any damages caused by the plaintiff's failure to fully perform should be deducted from the amount allowed for his services. *Fuller* v. *Rice*, 52 Mich. 435.

RECEIVERS — LIABILITY FOR RECEIVERSHIP EXPENSES. — The plaintiff brought suit for the foreclosure and sale of the property of a quasi-public corporation. Upon the plaintiff's application a receiver was appointed pending final judgment in the suit. After a decree establishing the plaintiff's rights it was found that the assets of the corporation were insufficient to pay the expenses of the receivership. *Held*, that the plaintiff is not personally liable for the deficiency. *Atlantic Trust Co.* v. *Chapman*, 208 U. S. 360. See NOTES, p. 529.

SOVEREIGNS — ACTION BY TRUSTEE PROCESS AGAINST RAILWAY OWNED BY FOREIGN SOVEREIGN. — The plaintiff brought suit for a tort by trustee process in Massachusetts against an unincorporated railway in Canada owned by the Crown. *Held*, that the court has no jurisdiction. *Mason* v. *Intercolonial Ry. of Canada*, 83 N. E. 876 (Mass.).

The court considered the case as if it were a suit against a foreign sovereign. A similar case was discussed in 17 HARV. L. REV. 270, 348.

STATUTES — INTERPRETATION — EFFECT OF SPECIAL SAVING CLAUSE ON GENERAL SAVING STATUTE. — The defendant was convicted of paying rebates in violation of the first section of the Elkins Act which had been superseded by the Hepburn Act. The offenses were committed prior to the enactment of the latter. The Hepburn Act expressly repeals all statutes or parts of statutes in conflict with its provisions. It contains an express saving clause mentioning only pending causes, and providing that such causes "shall be prosecuted to conclusion in the manner heretofore provided by law." § 13 of the United States Revised Statutes provides that "the repeal of any statute shall not have the effect to release any penalty incurred under such statute unless the repealing act shall so expressly provide." *Held*, that the conviction is valid. *Great Northern Ry. Co.* v. *United States*, 208 U. S. 452.

For a discussion of a previous decision reaching the same result, see 20 HARV. L. REV. 502.

SURETYSHIP — SURETY'S RIGHT OF SUBROGATION — SUBROGATION TO RIGHTS OF PRINCIPAL. — The B Company became surety on the statutory bond given by A, a contractor on government work, for the performance of the contract and the payment of laborers and materialmen. A completed the work, but B had to pay to laborers more than the amount due to the contractor and retained by the government under the contract. *Held*, that B is entitled to the fund retained by the government. *Henningsen* v. *U. S. Fidelity and Guaranty Co.*, 208 U. S. 404.

It is fundamental in the law of suretyship that a surety discharging the obligation of his principal is subrogated to the rights of the creditor against the principal. And the surety has also the right, equally well recognized but not

so frequently used, to be subrogated to all rights of the principal against any one else to be reimbursed for expenditures arising out of the transaction. *Bushong* v. *Taylor*, 82 Mo. 660; *Heart* v. *Bryan*, 2 Dev. Eq. (N. C.) 147. In the present case the situation is somewhat unusual in that one bond creates two entirely distinct suretyships. The surety is bound to the government for the completion of the work by the contractor and is bound to the laborers and materialmen for the payment of their claims by the contractor. *United States* v. *National Security Co.*, 92 Fed 549. Consequently the surety, when it discharges the claim of the laborers, is entitled to be subrogated to the fund retained by the government, since, up to the amount of that fund, the burden should ultimately be borne by the government and not by the contractor. The surety is also entitled to exoneration from that fund. *Richards Brick Co.* v. *Rothwell*, 18 D. C. App. 516.

TAXATION — PARTICULAR FORMS OF TAXATION — SPECIAL ASSESSMENTS FOR SPRINKLING STREETS. — Under a statute authorizing cities to provide by ordinance for the sprinkling of streets and to levy and collect special assessments therefor, the defendant city ordered an assessment for such a purpose. The abutting owners brought a bill in equity to have the assessment set aside. *Held*, that the statute authorizing the assessment is invalid. *Stephens* v. *City of Port Huron*, 113 N. W. 291 (Mich.). See NOTES, p. 533.

TRUSTS — CESTUI'S INTEREST IN RES — RIGHT TO EXCESS OF INTEREST OBTAINED BY BREACH OF TRUST AS BETWEEN TENANT FOR LIFE AND REMAINDERMAN. — The trustee of a settlement, invested in three per cent consols, sold the consols and used the proceeds in an unauthorized investment which yielded five per cent interest. After a number of years the trustee replaced in consols the amount he had withdrawn. The plaintiff, the remainderman under the settlement, claimed that the excess of interest obtained by the breach of trust should be added to the capital. *Held*, that the plaintiff is not entitled to the excess of interest. *Slade* v. *Chaine*, [1908] 1 Ch. 522.

The case follows two English cases, apparently the only decisions on the point. *Stroud* v. *Gwyer*, 28 Beav. 130; see *In re Appleby*, [1903] 1 Ch. 565. An early English case, however, seems irreconcilable in principle, in holding that when a trustee, in breach of his duty, failed to convert funds into authorized securities, but left them in a loan bearing ten per cent interest, the life beneficiary was not entitled to the actual interest that the money yielded. *Dimes* v. *Scott*, 4 Russ. 195; see also *Hill* v. *Hill*, 45 L. T. Rep. 126. Aside from an approval of this latter decision, the precise point does not seem to have arisen in this country. See *In re Lasak's Estate*, 20 N. Y. Supp. 74. It seems settled that when trust funds are invested in bonds which depreciate in value, such deductions should be made from the income of the life beneficiary as will make the capital of the trust fund whole when the bonds mature. *New York, etc., Co.* v. *Baker*, 165 N. Y. 484 If, to keep the *corpus* undiminished, the life beneficiary is to suffer, it would seem fair that he should receive such windfalls as may arise from excess in interest so long, at least, as the remainderman is uninjured.

UNFAIR COMPETITION — CONSPIRACY — NECESSITY OF INTENT TO INJURE PLAINTIFF. — Certain elevator owners, under an agreement to regulate competition in the grain business, combined with certain railroads to discriminate against non-members of the combination. The plaintiff sued for damages from resulting discrimination. *Held*, that the parties to the combination may avoid liability for conspiracy by proving that they entered the agreement in the belief that the plaintiff would become a member. *Kellogg* v. *Sowerby*, 190 N. Y. 370.

The intent is a vital element in a conspiracy. EDDY, COMBINATIONS, § 369. But this simply means that a combination is not illegal unless its object or the intended means of attaining it are improper. *Cf. O'Callaghan* v. *Cronan*, 121 Mass. 114; *Talbot* v. *Cains*, 5 Met. (Mass.) 520. The present case, however, before imposing civil liability, requires proof that the confederacy was, from its